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Docket No. 60,130-1109
01MRA0216

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Heaton, et al.
Serial No.: 09/915,805
Filed: 07/26/2001
Group Art Unit: 3683
Examiner: Torres, Melanie
Title: SPRING APPLIED ELECTRONIC RELEASE
PARKING BRAKE

REPLY BRIEF
PURSUANT TO 37 CFR §41.41

Mail Stop AF
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in reply to the Examiner's Answer mailed on July 22, 2005. Appellant wishes to maintain the appeal in the face of the new grounds of rejection presented by the Examiner in the Examiner's Answer.

The §103 Rejection

The Examiner's Answer fails to state any motivation for making the proposed modification to *Laxhuber* by adding components from *Messersmith*. Without any motivation for the proposed modification, there is no *prima facie* case of obviousness against any of Applicant's claims.

Even if there were somehow to manufacture some motivation for making the Examiner's proposed combination, the result would not be the same as Applicant's claimed invention. Neither the *Laxhuber* nor the *Messersmith* reference teaches a driveline parking brake assembly as recited

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in Applicant's claims. Clearly, nothing in either reference constitutes the combination of a transmission housing with other driveline braking brake components as recited in claim 18. Similarly, nothing in either reference (or the combination) constitutes a combination of an axle assembly with other vehicle driveline parking brake assembly components as recited in claim 19.

None of Applicant's claims are obvious and the rejection under §103 must be reversed.

The New Grounds of Rejection

The Examiner's Answer includes a new grounds of rejection under 35 U.S.C. §102(b) where the Examiner contends that the *Messersmith* reference anticipates Applicant's claims. There is no anticipation. The Examiner's interpretation of the *Messersmith* reference is unreasonable and contrary to how one skilled in the art would interpret the teachings of that document.

The Examiner contends that the pump 40, which is responsible for distributing brake fluid within the brake system, is the same as Applicant's claimed electrically powered actuator having a portion that engages a spring and selectively moves a spring and releases the claimed engaging portion out of a braking position. The Examiner's contention is that the fluid in *Messersmith* is the "portion" of the "electrically powered actuator 40" that engages the spring and moves the spring. The fluid in *Messersmith* cannot be considered part of the pump 40. It is not a portion of the pump. No portion of the pump 40 engages any portion of the spring within that document. *Messersmith* relies upon fluid pressure for releasing the brake and does not rely upon an electrically powered actuator having a portion to engage a spring for releasing the brake. There is no anticipation.

Applicant's claims are directed to a particular type of vehicle driveline parking brake arrangement. According to Applicant's claims, an electrically powered actuator interacts with a spring to control the application of a parking brake applying a braking force to a driveline component. *Messersmith* does not teach that.

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Further, *Messersmith* does not teach a driveline parking brake. *Messersmith* (as can be clearly seen from the drawing) discloses a wheel brake assembly. There is a recognized distinction in the art between wheel brakes and driveline brakes. The components upon which the brake acts distinguishes a wheel brake from a driveline brake.

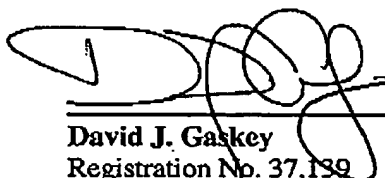
Additionally, the *Messersmith* reference does not possibly show an arrangement as claimed in either of claims 18 or 19. There is nothing that constitutes a transmission housing in relation to the other components claimed in claim 18 within the *Messersmith* reference. Similarly, there is nothing in that reference that constitutes an axle assembly in relation to the other components claimed in claim 19.

The new grounds of rejection must be reversed and this application, which has now been pending for more than four years must be allowed.

Respectfully submitted,

CARLSON, GASKEY & OLDS, P.C.

September 22, 2005
Date

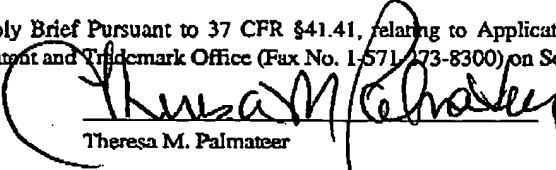


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CERTIFICATE OF FACSIMILE

I hereby certify that this Reply Brief Pursuant to 37 CFR §41.41, relating to Application Serial No. 09/915,805, is being facsimile transmitted to the Patent and Trademark Office (Fax No. 1-571-273-8300) on September 22, 2005.


Theresa M. Palmateer

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